

Applicant : Matthew D. Putnam et al.  
Serial No. : 10/073,942  
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Attorney's Docket No.: 09531-075001 / Z01088

Amendments to the Drawings

Please replace the drawings in the application with the formalized drawings attached hereto.

## REMARKS

Applicants respectfully request entry of the remarks submitted herein. Claims 1-8, 26, 27, 33, 34, 37, 38 and 40 are currently pending, and claims 9-25, 28-32, 35, 36, and 39 are withdrawn. Reconsideration of the pending application is respectfully requested.

### The Objections to the Drawings

The Examiner indicated that the lines, numbers and letters of Figures 1-70 are not uniformly thick and well defined. Applicants herewith provide a formalized set of Figures 1-70. In view of the formalized figures, Applicants respectfully request that the objection to the drawings be withdrawn.

### The 35 U.S.C. §102 Rejections

Claims 1-8, 26, 27, 33, 34, 38 and 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by Strelt (U.S. Patent No. 4,565,193). According to the Examiner, Strelt discloses an elongated fixation plate that has tines and at least one tensioning device. The Examiner asserted that "tensioning devices (screws) can also be considered to be tines because the definition of a tine is a sharp, projecting point or prong" and, referring to Figure 1, that "the proximal portion [of Strelt's fixation plate] follows the volar configuration of the distal head of the radius." This rejection is respectfully traversed.

In fact, the device shown in Strelt is not configured for volar application. The device shown in Figure 1 is applied dorsally, and such a configuration (e.g., the angle of the fixation plate and the angles of the tines) could not be used in the volar position. Applicants respectfully refer the Examiner to paragraph [0097] in the specification, which discloses that a "primary design difference between a tined plate for distal radius dorsal fixation and distal radius volar fixation is the angle between the proximal portion and the distal portion of the plate and results from the anatomical differences between the distal dorsal radius and the distal volar radius (FIG. 2a). For example, the volar anatomy includes a sharper angle in the transition between the length of the radius and the distal head of the radius."

The Examiner asserted that statements of intended use and other functional statements do not impose any structural limitations on the claims [that are] distinguishable over Strelis (OA at page 3) and that "the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus..." (OA at page 4). Contrary to the Examiner's assertions, however, the body of independent claims 1, 34 and 38 require that the fixation plate be "configured to be mounted to the volar surface of the distal radius." In addition, dependent claims 7 and 8 are directed toward the particular angle between the distal and proximal portions of the fixation plate that are required for volar fixation. Contrary to the Examiner's statements, the pending claims do impose structural limitations on the fixation plate that are distinguishable over the fixation plate of Strelis.

Further, the Examiner stated that the "members ... placed in the aperture in the distal end of [Strelis'] plate are considered to be articulating since they are placed in the articulating region of the radius. This is not a correct interpretation of 'articulating' and Applicants respectfully refer the Examiner to paragraph [0104] of the specification, which discloses that articulating refers to non-integral. Therefore, Strelis does not disclose a fixation plate having articulating lines as is recited in pending claims 26, 27, 34 and 40.

In view of the remarks herein, Applicants respectfully request that the rejection of claims 1-8, 26, 27, 33, 34, 38 and 40 under 35 U.S.C. §102(b) be withdrawn.

#### The 35 U.S.C. §103 Rejections

Claim 37 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Strelis. According to the Examiner, Strelis does not disclose an articulating portion having a hemispherical shape, but the Examiner asserted that it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made. This rejection is respectfully traversed.

The Examiner has only made conclusory statements, and has not presented sufficient evidence that a person of ordinary skill in the art would have been prompted to construct an articulating portion having a hemispherical shape. "[R]ejections on obviousness grounds **cannot be sustained by mere conclusory statements**; instead, there **must be some articulated reasoning** with some rational underpinning to support the legal conclusion of obviousness" (*KSR Int'l Co.*

v. *Teleflex Inc.* (127 S.Ct. 1727, 1741, 82 USPQ2d 1385 (2007), quoting *In re Kahn* (441 F.3d 997, 988 (Fed. Cir. 2006)). Therefore, this rejection is improper.

In view of remarks herein, Applicants respectfully request that the rejection of claim 37 under 35 U.S.C. §103(a) be withdrawn.

Request for Rejoinder

Claims 9-25, 28-32, 35, 36, and 39 stand withdrawn as directed to non-elected species. Since claims 1-8, 26, 27, 33, 34, 37, 38 and 40 should be allowable in view of the remarks herein, Applicants respectfully request that claims 9-25, 28-32, 35, 36, and 39 be rejoined and allowed pursuant to MPEP §821.04(b).

**CONCLUSION**

Applicants respectfully request allowance of claims 1-40. Please apply the \$510 fee for the enclosed Petition for Three-Month Extension of Time and any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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